IN THE COURT OF CRIMINAL APPEALS OF TENNESSEE
AT NASHVILLE
Assigned on Briefs June 9, 2009

STATE OF TENNESSEE v. HAROLD JOHNSON, JR.

Appeal from the Circuit Court for Overton County
No. 5990A Leon C. Burns, Jr., Judge

No. M2008-01070-CCA-R3-CD - Filed October 15, 2009

The Defendant, Harold Johnson, Jr., was convicted by an Overton County jury of two counts of first degree premeditated murder, two counts of first degree felony murder, two counts of especially aggravated robbery, and two counts of abuse of a corpse. The trial court merged the convictions for first degree premeditated murder and felony murder. For these convictions, the Defendant received an effective sentence of life imprisonment with the possibility of parole. In this direct appeal, the Defendant raises the following issues for our review: (1) whether the trial court properly denied his motion to suppress the evidence, determining that the stop of the vehicle in which the Defendant was a passenger was supported by probable cause; (2) whether the trial court abused its discretion by admitting a tape recording because the recording failed to comply with the "rule of completeness," and because it was unfairly prejudicial; and (3) whether the evidence was sufficient to support his convictions.[1] Following a review of the record and the applicable authorities, we affirm the judgments of the trial court.

Tenn. R. App. P. 3 Appeal as of Right; Judgments of the Circuit Court Affirmed

DAVID H. WELLES, J., delivered the opinion of the court, in which THOMAS T. WOODALL and J.C. MCLIN, JJ., joined.

John Milton Meadows, III, Livingston, Tennessee, for the appellant, Harold Johnson, Jr.

Robert E. Cooper, Jr., Attorney General and Reporter; Benjamin A. Ball, Assistant Attorney General; William E. Gibson, District Attorney General; and John A. Moore, Assistant District Attorney General, for the appellee, State of Tennessee.

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[1] For the purposes of clarity, we have renumbered and reordered the issues as stated by the Defendant in his brief.

OPINION

Factual Background

This case arises from the shooting deaths of the Defendant's daughter, forty-two-year old Sandra Ann Looper, and her husband, approximately seventy-five-year-old Lonzo "L.J." Looper ("Sandra," "L.J.," or "the victims"), occurring on about April 1, 2005. Following discovery of the bodies and police investigation pointing to the Defendant, an Overton County grand jury indicted the Defendant, along with his co-defendant, Shane Michael Grogger,[2] ("Grogger") for two counts of each of the following: first degree premeditated murder, first degree felony murder, especially aggravated robbery, and abuse of a corpse. See Tenn. Code Ann. §§ 39-13-202, -13-403, -17-312(a)(1).

Thereafter, the Defendant filed a motion to suppress the evidence. He argued that the stop of the vehicle and his subsequent arrest were not supported by probable cause, seeking to suppress the statements he made in the back of the patrol car and the evidence found after his consent to search his residence. A hearing on the motion was conducted.

Deputy Todd Logan of the Putnam County Sheriff's Department testified that, on the morning of April 3, 2005, he was involved in investigating a suspected homicide. His job was to survey the home of Diane Stone, the Defendant's girlfriend, at 9000 Silers Vickers Road, because law enforcement believed the Defendant to be inside. Deputy Logan was given the Defendant's name; he did not personally know the Defendant. When asked what information he had about the potential homicide investigation, he responded,

> What I was told was that the two people that were missing were, the possible suspects in a homicide, and that one of the victims was a sibling, or daughter of one of the subjects, and that they had been missing for a couple of days; and that they were possibly armed with a shotgun . . . .

Following his instructions, he proceeded to a cemetery located on Dobbs Cemetery Road, "just off of Austin Bottom Road[,]" in Putnam County. Around 8:00 or 9:00 a.m., he joined other officers, Deputies Chuck Ledbetter and Ed Henley, who were already on the scene. They were watching "a mobile home trailer, located on that road just the opposite side of where [the officers] were sitting." According to Deputy Logan, Deputy Ledbetter had gone across the cemetery and was observing the residence through binoculars. Twenty to thirty minutes after Deputy Logan's arrival, Deputy Ledbetter returned and told them that "he had seen an older man and a young man get in this white car." About that time, a white Oldsmobile passed the officers, and Deputy Ledbetter said, "Well, that's the car[.]" Both individuals inside the car waved at the officers; the officers waved back.

[2] The Defendant and Grogger were tried separately. The motion to suppress hearing was a joint hearing involving both men.

Deputy Logan called Detective Doug Burgess and told him of the events happening at the residence. According to Deputy Logan, Det. Burgess then instructed them to conduct a "felony stop" of the vehicle. Deputy Logan acknowledged that there were no arrest warrants at the time and no other reason to stop the vehicle. Having lost sight of the vehicle, the officers returned to their cars and proceeded to Austin Bottom Road. Deputy Ledbetter went south on the road, and Deputy Logan, followed by Deputy Henley, went north on the road, toward Cookeville. Deputies Logan and Henley spotted the vehicle on Cookeville Boatdock Road and activated their blue lights. Both officers exited their respective cars with their guns drawn. The driver of the vehicle, Grogger, was instructed to exit the vehicle, throw his keys away from the vehicle, and walk backwards toward the officers. Ultimately, Grogger was ordered to drop to his knees, and he complied. He was handcuffed and placed inside Deputy Logan's car; Deputy Henley then went to the passenger side of the vehicle, opened the door to the vehicle, handcuffed the Defendant, and placed him in the other patrol car. Deputy Logan stated that he followed this arrest procedure for safety reasons, believing that these two individuals might be armed and dangerous, as someone had previously made reference to a shotgun. He said he was "trying to take these two people into custody without any harm." When asked if at any time the Defendant and Grogger were free to leave, Deputy Logan replied in the negative.

Within minutes, more officers arrived on the scene: Putnam County Sheriff David Andrews, Deputy Ledbetter, and Tennessee Bureau of Investigation (TBI) Agent Bob Krofssik. It was determined that the vehicle belonged to Grogger. After Deputy Logan read Grogger his Miranda[3] rights and Grogger signed a waiver of rights form, Deputy Logan requested consent to search the vehicle. He read the form to Grogger, and Grogger signed the consent to search form at 10:21 a.m. At some point thereafter, the Defendant was moved into Deputy Logan's patrol car along with Grogger. Deputy Logan "Mirandized" the Defendant once inside the car, who likewise signed a waiver of rights form. Then, Deputy Logan asked the Defendant where his residence was located and, acting upon the Sheriff's direction, asked for consent to search that residence, 1036 Copeland Cove Road in Livingston, Overton County; the Defendant thereafter signed a consent to search form. During this process, the Defendant inquired of Deputy Logan "why this was all taking place," and Deputy Logan explained that they were searching for two missing persons.

Deputy Logan testified that sometimes two individuals were placed in the back of the same patrol car and that he believed another superior officer on the scene instructed him to move the Defendant to his car. Deputy Logan did so because his car had operational recording equipment, whereas Deputy Henley's car did not. According to Deputy Logan, the initial reason to move the Defendant was to record the giving of his Miranda rights. After that, the Defendant and Grogger were left alone in the car, and their conversation was taped. The Defendant and Grogger made statements indicating some knowledge about the murders. Deputy Logan's report reflected that they were arrested at 10:57 a.m. and transported to the jail for questioning.

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[3] See Miranda v. Arizona, 384 U.S. 436 (1966)

Deputy Logan participated in the search of the vehicle. Inside a plastic Wal-Mart shopping bag seen in the trunk of the car, the officers discovered a pair of jeans, with a pair of yellow gloves in the pocket. There were blood stains on these items. They photographed the items, which were left inside the car. Deputy Logan confirmed that no weapons were found in the car. A wrecker was called to the scene, and the vehicle was towed for further investigation. The items found at the stop site were later removed from the vehicle at 8:40 p.m., and additional items were removed at a later date. The items were sent to the TBI for testing.

Next to testify was TBI Agent Krofssik. He received a call on early Sunday morning, April 3, to assist Agent Steve Huntley with an investigation in Overton County, following the discovery of two dead bodies. He proceeded to the Putnam County Sheriff's Department and met with the Sheriff, who updated him on the investigation. He then went with the Sheriff to the site were the bodies had been found: the Defendant's residence at 1036 Copeland Cove Road. Prior to going to the scene, Agent Krofssik learned that family members of the victims had reported them missing and that they had concerns as to their whereabouts, believing "foul play" to be involved.

Upon his arrival at the scene, Agent Krofssik was informed that the victims' vehicle, a burgundy, four-door Dodge Stratus, was parked on the side of the Defendant's house, that the window of the vehicle was "broken out," that there was a lot of blood inside the car, and that the license plate had been removed. The victims' bodies were found under a "brush pile" several hundred feet from the house. Through other members of law enforcement, Agent Krofssik also learned that the Loopers' other vehicle, a Toyota sport utility vehicle (SUV), had been seen parked in front of the Defendant's girlfriend's house and that, previously, the Defendant had been located at her home. A dispatcher had contacted the Defendant at that residence, and the Defendant relayed that he knew where the Loopers had gone, that they were not missing but on a "long" vacation, and that they did not want anyone to know where they were. The Defendant further stated that the Loopers had sold him the Toyota SUV so they would have some money to go on vacation.

Agent Krofssik also testified that, on April 1, family members had gone inside the victims' home. There, they discovered the victims' medicine, dirty dishes, a cell phone, and other personal items that they would have taken with them had they gone on a trip. Moreover, the victims did not tell family members they were leaving, "which they would have normally done." Agent Krofssik did not find the Defendant's version reasonable.

Based upon all of the information received at this point during the investigation, the Defendant was the primary suspect in this case. Agent Krofssik did not know what the Defendant or Grogger looked like; however, he did know that the Defendant was at Ms. Stone's residence. Agent Krofssik and Sheriff Andrews left the Sheriff's Department, going to Ms. Stone's residence to speak with the Defendant, and anyone else in the house, about the murders. While en route, the officers conducting surveillance of the residence communicated to them that an older man and a younger man had gotten into a vehicle and were leaving the residence; Agent Krofssik instructed the officers to follow the vehicle and conduct a "felony stop." Agent Krofssik and Sheriff Andrews arrived on the scene of the stop shortly thereafter.

When asked if the two men were under arrest at the time Agent Krofssik arrived, he stated,

> They were never told that they were under arrest, and, in fact, I had asked Deputy Logan to make sure that he advised them of their rights, and to make sure he got it on a recording device, so that it was recorded. I also told him to, after he had done that, to put both the defendants . . . in the same vehicle and to leave the recording device going.

Agent Krofssik stated that he did not order a full arrest in conjunction with the traffic stop. Although he himself did not tell the officers, he believed the officers knew that the Defendant might be in possession of a shotgun, which was the reason for the "felony stop rather than a normal traffic stop." Agent Krofssik confirmed that the Defendant and Grogger were not free to leave; "They're being detained for sure." He further relayed, "If they had asked to leave, I would have arrested both of them."

Agent Krofssik advised the Defendant and Grogger that he and his colleagues were investigating the disappearance of the Defendant's daughter and that they wanted to talk to them about that. They both agreed to speak with Agent Krofssik and agreed to be transported to the Sheriff's Department for an interview; they were both cooperative. According to Agent Krofssik, the Defendant again said that the victims were on a trip; he recalled that the Defendant and Grogger were in separate vehicles at the time. Agent Krofssik also relayed that it was his decision to place the Defendant and Grogger in the same patrol car because there was recording equipment in there and because he "wanted to catch what they said" about the murders.

After leaving the scene of the stop, Agent Krofssik went to interview Ms. Stone and her daughter and also conducted a search of that residence. Upon returning to the Sheriff's Department, Agent Krofssik interviewed Grogger beginning at 5:10 p.m.; Agent Huntley was also present. Grogger was again "Mirandized," stated that he understood his rights, and signed a consent form. The interview was recorded. The same procedure was followed with the Defendant, and Agent Huntley took the lead in interviewing him while Agent Krofssik was present. At some point during Grogger's interview, Agent Krofssik asked Grogger if he could collect certain items of his clothing for examination purposes, and Grogger agreed and signed a consent to search form. According to Agent Krofssik, Grogger never requested to leave and was willing to talk with law enforcement. Agent Krofssik confirmed that he did not coerce Grogger prior to the interview. According to Agent Krofssik, the Defendant denied any knowledge of the events.

Agent Huntley then testified. He interviewed the Defendant at the Putnam County Jail, after the Defendant was taken into custody. According to Agent Huntley, the Defendant was cooperative, never asked to leave, and was not threatened or coerced into talking with law enforcement. He confirmed that the Defendant was "Mirandized" before his interview and that Agent Krofssik and Overton County Sheriff William J. "Bud" Swallows were present during the interview. When the Defendant asked for an attorney during the interview, the interview ceased.

Agent Huntley confirmed that Grogger signed a consent to search form following his interview and gave his boots and jacket to Agent Huntley for examination. The following day, Grogger gave a second statement to Agent Huntley. Agent Huntley testified that an arrest warrant was issued and that Grogger was officially arrested at 12:05 a.m. on April 4.

Following the suppression hearing, the trial court determined that the stop of Grogger's vehicle was supported by probable cause to arrest the Defendant. Thus, the resulting evidence was admissible against the Defendant, and the sixty-five-year-old Defendant proceeded to trial.

The evidence at trial established that the Defendant and Sandra operated a yard sale business together, and they often argued about the business. The Defendant often inquired about purchasing the victims' 1987, silver Toyota SUV. Approximately two weeks before the murders, the Defendant again asked to buy the vehicle. After the Defendant said he could get enough money together to purchase the car, Sandra responded "over her dead body," to which the Defendant said "that could be arranged." About a year prior to the murders, Karen Murphy, Sandra's cousin, was at church, when she heard the Defendant say he could kill Sandra, dispose of her body, and get away with the crime.

The Defendant's girlfriend, Diane Stone, testified that the Defendant was staying with her at the end of March through the beginning of April. Also staying in the house was Ms. Stone's daughter, Elizabeth Ann Dobbs, and her daughter's boyfriend, Grogger. In the week prior to April 1, the Defendant and Grogger went to the Defendant's residence every day to work. The Defendant had also asked Ms. Stone for her opinion about purchasing the Loopers' SUV. He informed her that he was going to go to the bank and get a loan in order to purchase the vehicle. He later told her that he had secured the loan.

According to Ms. Stone, on Friday, April 1, the Defendant and Grogger left around 9:00 a.m. to go to the Defendant's residence to work. They returned between 12:00 and 1:00 p.m., with the Loopers' SUV. He gave Ms. Stone the key to car and said, "It's yours." The Defendant also gave her the title to the vehicle. Although the title was unsigned, he said he would get L.J. to sign it when he returned from their trip. Moreover, the Defendant's clothes were dirty, so he showered, dropping his clothes on the floor. When asked if there was any evidence of injury to the Defendant, Ms. Stone replied that he had "a place on his arm." The Defendant explained to her that he had been scratched.

After the Defendant and Grogger cleaned up, the foursome went to eat at Ruby Tuesday's, leaving about 1:30 or 2:00 in the afternoon. Grogger ordered a hamburger and was eating it when Ms. Dobbs commented about how raw the meat was and the bloodiness of it. Grogger became withdrawn, "just sitting there staring as if off in space somewhere." The Defendant paid for everyone's meal. They then returned home and watched television. Thereafter, Grogger and Ms. Dobbs left and went to visit another family member.

The following day, Grogger, Ms. Stone, and Ms. Dobbs left and went to Wal-Mart in Cookeville; they were gone about three hours. The Defendant gave Ms. Stone a one-hundred-dollar bill before she left. To Ms. Stone's knowledge the Defendant did not leave her house that day; however, Grogger and his girlfriend again left the house once they returned from Wal-Mart. On Sunday morning, the Defendant and Grogger left Ms. Stone's to go to the Defendant's residence "to clean up around a lady's house where they had supposedly cut a tree and stuff, trimmed a tree for her." The Defendant's clothes had not been washed prior to his arrest.

A neighbor of the victims, Ms. Chris Hooks, testified that, on Thursday, March 31, 2005, she spoke with Sandra and that she observed L.J. outside cutting wood. She also testified that she spoke with Sandra sometime later on that day and that she saw both of the victims' vehicles at the residence on that day. However, this was the last time she saw or spoke to either of the victims. When she left her house on the morning of April 1, the victims' vehicles were at the house, but they were both gone when she returned home later on that evening.

Barbara Hayes was Sandra's daughter and the granddaughter of the Defendant. According to Ms. Hayes, her mother was disabled and her step-father was retired and suffered from diabetes. Just two weeks before Sandra died, Sandra cared for the Defendant while he was sick and picked him up from the hospital. Ms. Hayes testified that she talked with her mother frequently throughout the day and that they often met to go to lunch. She tried to contact her mother multiple times on Friday, April 1, to no avail. She reported the victims missing shortly after midnight on Saturday, April 2, 2005. Around 1:00 a.m., Overton County Deputy Lee Swallows went to the Defendant's residence at Copeland Cove, which the Defendant rented from Perry Wendell, to do a "welfare check[,]" believing that the victims might be at that residence. He went and knocked on the door several times but did not receive an answer. He observed a tractor and a pick-up truck on the property. Deputy Swallows then left.

After Deputy Ron Harris arrived at the victims' residence, Ms. Hayes' ex-husband kicked the door down. They looked around the house, and all of the victims' things were still inside: their medicine (including L.J.'s insulin and his diabetic test kit), suitcases, her clothes, and her mother's cell phone (Sandra had two cell phones). The dishes were dirty, and oranges were left on the counter.

Ms. Hayes had frantically searched for her mother throughout the day on April 2, and she ultimately obtained the address of the Defendant's girlfriend. She drove over to Ms. Stone's house and observed the Toyota SUV parked out front. Ms. Hayes notified the authorities. Dispatcher Gina Parker, with the Putnam County Sheriff's Department, telephoned Ms. Stone's residence. Ms. Stone answered and then gave the phone to the Defendant. When asked if he had information about the victims' whereabouts, the Defendant stated that they were not missing but had gone on a trip for two or three weeks. The Defendant also stated that he had purchased the SUV from the Loopers for three hundred dollars, as they needed the money to go on vacation, last seeing them the day before, Friday afternoon, April 1. He claimed he would be visiting the victims' house and checking their mail while they were gone.

During the early morning hours of Sunday, April 3, Deputy Swallows was on routine patrol with Deputy Jacob Bozwell. As they drove by the Defendant's residence on Copeland Cove, Deputy Swallows observed a burgundy-colored car sitting beside the house to the left. Deputy Bozwell went and knocked on the door several times, but no one answered. He then went around the house to the back door. Deputy Swallows had gone to look at the vehicle; he noticed that the passenger side window was "knocked out of the vehicle" and informed Deputy Bozwell. Deputy Bozwell went to the vehicle and observed bone matter, hair, and blood inside the car. The deputies, fearing for their safety, then left the residence until further assistance arrived. It was still dark outside at this time.

After Sheriff Swallows and Deputy Shane Higgenbothem arrived, they conducted a search of the Defendant's residence and discovered the bodies of the victims in a "brush pile." According to Sheriff Swallows, the arms of one of the victims appeared to have been cut off. Sheriff Swallows also testified that he saw another "burn pile" behind the house, which appeared to contain burnt clothes. The tractor was still on the property, and there were fresh tracks between the Dodge Stratus and the brush pile. It was noted that Sandra was a particularly large women and assistance would have been needed to move her. The tractor on the property had a scoop attachment, which appeared to have blood on it, although the substance could not be tested. Officers also found blood, tissue matter, a twenty-gauge shotgun shell, a fired shell, shotgun wadding, Sandra's wallet, and glass fragments in and around the Defendant's driveway. A pile of gravel on the property was also said to contain blood and tissue.

It was later determined that Sandra had been shot five times with a twenty-gauge shotgun, two to her face, two to her left shoulder, and one to her chest. L.J. suffered two gunshot wounds, one below his left ear at close range. Both died as a result of these wounds, and both had evidence of additional, blunt-force injuries, such as multiple rib fractures, lacerations, bruises, and abrasions. There was extensive damage to Sandra's fingers, and her left arm had almost been severed from her body. Many of these injuries were believed to have occurred after their deaths.

Following the evidence observed on the Defendant's property, officers conducted the vehicle stop of Grogger and the Defendant outlined in detail above. Deputy Logan gave a similar account of the events at trial. The audiotape of the Defendant's and Grogger's conversation in the back of the patrol car was played for the jury and admitted as an exhibit. The Defendant made statements to Grogger such as "don't say a word," "they're gonna have to charge us to hold us," "stay real quiet," "just don't ever tell them where they're at," "did they get that bag out yet," and "if you'd got back last night, . . .we'd have gone up there and done that last night." After officers found the bag in the trunk of the car, the Defendant asked Grogger if he was going to claim the pants as his own, to which Grogger replied, "guess I'll have to, won't I?" The Defendant said, "Yep."

According to Agent Huntley, shotgun pellets appeared to have struck the Dodge Stratus. Shotgun wadding was removed from the Dodge Stratus.

After the Defendant consented to the search of his house, officers discovered L.J.'s wallet and two spent shotgun shells inside a wood-burning stove. Agent Huntley found the license plate

from the Dodge, the keys to the car, and Sandra's other cell phone between the Defendant's mattress and box-spring. He also located six additional spent twenty-gauge shotgun shells and nine new shotgun shells inside the house, an empty box of Remington twenty-gauge "five shot" shotgun shells, and a twenty-gauge shotgun in three different pieces. Later TBI testing revealed that the spent shotgun shells in the driveway matched the ones found in the Defendant's residence. The tests also showed that the shotgun found inside the Defendant's home fired the shells that killed the victim and that these shells were fired within twenty feet of the victims.

Agent Huntley confirmed that gunshot residue was found on Grogger's shirt and gloves and that blood from the victims was located on Grogger's blue jeans, boots, and jacket. The only forensic evidence associated with the Defendant was his fingerprints discovered on the tractor.

As previously stated, Agent Huntley returned to the jail and interviewed the Defendant. The Defendant conveyed information similar to what he had given to the dispatcher. During the conversation, the Defendant claimed that he met the Loopers on Friday at a nearby McDonald's Restaurant to get the car he had purchased the previous week for three hundred dollars. He admitted to owning a shotgun but said that he doubted it was capable of firing. He also relayed that L.J. had signed the title of the car over to him; however, the title was entered into evidence and did not reflect L.J.'s signature. The Defendant claimed that other people had access to his tractor and that he never locked his house, so anyone could have gotten inside the house. The tractor key was in the Defendant's possession at the time of his arrest. When the Defendant was asked about his conversation with Grogger in the back of the patrol car, he asked for a lawyer, and the interview ceased. A recording of this conversation was played for the jury and admitted into evidence.

The Defendant spoke of the murders while in jail. He told Chris Cook, an inmate, that "he had killed two and he would eight or ten more if he got the chance." Cook believed he was referring to his daughter and son-in-law. He was asked why he did not feed the bodies to the hogs, and the Defendant replied that he would have had to bury the bones. Inmate Johnny Edward Parks testified that he heard the Defendant say that he owned a shotgun, had shot his daughter and her boyfriend, and made "Shane Strogger" move the bodies from the car. Richard Stidam, Jr., also an inmate, relayed that he was talking with the Defendant about their charges and that the Defendant said "that he got real pissed off over a car deal, and that he pulled a gun and shot" his daughter and son-in-law. Casie Harris, a corrections officer with the Overton County Sheriff's Department, heard the Defendant state to another inmate, "If you don't shut up, I'll chop you up just like I did my daughter."

The Defendant presented three witnesses on his behalf. Jessie Looper, the Defendant's nephew, testified that he went to the Defendant's house about 1:00 p.m. on Saturday, April 2, looking for the victims. He walked around the property and "didn't see a sign of anything[.]" Inmate James Murphy testified that he was in the holding cell with Defendant, Johnny Parks, and Richard Stidam, and that he never heard the Defendant discuss the murders. Last to testify was James Cantrell, a neighbor of the Defendant's, who lived just thirty to forty-five yards from the Defendant's house. Mr. Cantrell did not hear any gunshots while out "four-wheeling" on the evening

of April 2 and never noticed anything unusual that Saturday when he drove past the Defendant's home.

At the conclusion of the proof, the jury found the Defendant guilty as charged. His felony murder counts were merged with the premeditated murder counts, and he was sentenced to concurrent terms of life with the possibility of parole. His sentences of twenty years for each especially aggravated robbery conviction and two years for each abuse of a corpse conviction were ordered to be served concurrently with one another and concurrently with his life sentence for murder. Following the denial of his motion for a new trial, the Defendant filed a notice of appeal to this Court. The case is now properly before us for our review.

Analysis

I. Motion to Suppress

On appeal, the Defendant argues that the trial court erred by denying his pretrial motion to suppress the evidence, contending that the statements he made in the back of Deputy Logan's patrol car and evidence recovered from Grogger's vehicle[4] were fruits of his illegal arrest, not supported by reasonable suspicion or probable cause.[5] When this Court reviews a trial court's ruling on a motion to suppress, "questions of credibility of the witnesses, the weight and value of the evidence, and resolution of conflicts in the evidence are matters entrusted to the trial judge as the trier of fact." State v. Odom, 928 S.W.2d 18, 23 (Tenn. 1996). "The party prevailing in the trial court is entitled to the strongest legitimate view of the evidence adduced at the suppression hearing as well as all reasonable and legitimate inferences that may be drawn from that evidence." Id. A trial court's findings of fact in a suppression hearing will be upheld unless the evidence preponderates otherwise. State v. Williams, 185 S.W.3d 311, 314 (Tenn. 2006) (citing Odom, 928 S.W.2d at 23). The application of the law to the facts, however, is a question of law which this Court reviews de novo. Williams, 185 S.W.3d at 315; State v. Yeargan, 958 S.W.2d 626, 629 (Tenn. 1997).

In its written order denying the Defendant's motion to suppress, the trial court determined

> that the stop of the [co-defendant's] automobile by law enforcement authorities in Putnam County on April 3, 2005, was proper and did not amount to an illegal stop. The [c]ourt further finds that law enforcement officials had probable cause at the time of the stop to believe that the [D]efendant . . . was guilty of the charges contained in the indictment in this matter, and that he was a passenger in the vehicle that was stopped.

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[4] He does not specifically challenge any of the remaining evidence used by the State at trial as being fruit of his illegal arrest, although he does state "all of the evidence" including these two items.

[5] The Defendant also argues that he was clearly seized for constitutional purposes. The State does not contest this contention on appeal. The Defendant was removed from the vehicle at gunpoint, handcuffed, and placed in the back of a patrol car. We agree that the Defendant was seized, because he was not free to leave, regardless of the fact that a formal arrest had not yet been made.

The question before this Court is whether these facts created probable cause for Deputy Logan to stop the vehicle to arrest the Defendant.[6] The Fourth Amendment to the United States Constitution and article I, section 7 of the Tennessee Constitution mandate that a warrantless arrest must be supported by probable cause. State v. Bridges, 963 S.W.2d 487, 491 (Tenn. 1997) (citing Beck v. Ohio, 379 U.S. 89, 91 (1964)); see also State v. Lewis, 36 S.W.3d 88, 97-98 (Tenn. Crim. App. 2000). From the statute, it is clear that an officer may make a warrantless arrest "[w]hen a felony has in fact been committed, and the officer has reasonable cause for believing the person arrested has committed the felony . . . ." Tenn. Code Ann. § 40-7-103(a)(3). Simply stated, the officer must have "probable cause to believe the person to be arrested has committed the crime." Lewis, 36 S.W.3d at 98. Probable cause depends on whether the facts and circumstances and reliable information known to the officer at the time of arrest were "sufficient to warrant a prudent [person] in believing that the [individual] had committed or was committing an offense." Bridges, 963 S.W.2d at 491 (quoting Beck, 379 U.S. 89 at 91; State v. Melson, 638 S.W.2d 342, 350 (Tenn. 1982)). Probable cause must be more than a mere suspicion. Melson, 638 S.W.2d at 350.

Here, the information known to authorities was sufficient to warrant a belief that the Defendant had likely participated in the murders. The Defendant was known to be inside Diane Stone's house, and Agent Krofssik and Sheriff Andrews were on their way to interview him in connection with the murders. Law enforcement officers knew the Defendant was an older person because he was the father of one of the victims. Two bodies had been discovered in a brush pile at the Defendant's residence, and officers had also located one of the victims' vehicles at his residence. The window of the vehicle was "broken out," there was a lot of blood inside the car, and the license plate had been removed. Family members had informed law enforcement officers that the victims had left their medicines and a cell phone at their home and that the dishes were not washed. The Defendant told a dispatcher that the victims were not missing but that they had gone on a trip; Agent Krofssik found the Defendant's story implausible. The other vehicle belonging to the victims, the Toyota SUV, was parked in front of the Defendant's girlfriend's house. Officers observed an older man and a younger man get inside a white vehicle and leave the residence. Officers knew the Defendant's relative age, that he was present in the Stone home, and that he was leaving the home in an automobile. Agent Krofssik had probable cause to order a "felony stop" of the vehicle driven by Grogger to arrest the Defendant; it was not necessary for Deputy Logan (the arresting officer) to have all of the pertinent information himself because the officers were working in conjunction with each other. As such, we conclude that the trial court did not err in denying the Defendant's motion to suppress; the record supports the determination that the authorities had probable cause to arrest the Defendant who was a passenger in the vehicle.

II. Admissibility of Tape Recording

Next, the Defendant argues that the trial court erred in admitting the audio recording of the conversation in Deputy Logan's patrol car because the "rule of completeness" could not be complied

[6] The State does not argue on appeal that the stop was supported by reasonable suspicion, contending only that the stop was supported by the higher standard of probable cause. We agree. This was more than just a brief investigatory stop of the Defendant based upon reasonable suspicion. See Terry v. Ohio, 392 U.S. 1, 21 (1968).

with, as portions of the tape were inaudible and unintelligible. Tennessee Rule of Evidence 106 provides that "[w]hen a writing or recorded statement or part thereof is introduced by a party, an adverse party may require the introduction at that time of any other part or any other writing or recorded statement which ought in fairness to be considered contemporaneously with it." In the instant case, the entire recording was entered into evidence; it was not incomplete in any way. There was no attempt by the State to introduce only a portion of the statement or to mislead the jury concerning its contents or context. Given the circumstances of this case, we conclude that the "rule of completeness" does not apply. Moreover, none of the unfairness concerns which Rule 106 is designed to alleviate were present in this case. The "rule of completeness" does not render the recording inadmissible simply because portions of the tape were inaudible.

The Defendant also argues that the tape should have been excluded because it was unfairly prejudicial, containing offensive song lyrics ("Highway to Hell" by AC/DC) played on the car radio while the Defendant and Grogger were talking to each other inside Deputy Logan's patrol car. "'Relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence." Tenn. R. Evid. 401; see also State v. Kennedy, 7 S.W.3d 58, 68 (Tenn. Crim. App. 1999). Tennessee Rule of Evidence 402 provides that "[a]ll relevant evidence is admissible except as [otherwise] provided. . . . Evidence which is not relevant is not admissible." However, even relevant evidence "may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury, or by considerations of undue delay, waste of time, or needless presentation of cumulative evidence." Tenn. R. Evid. 403. It is within the trial court's discretion to determine whether the proffered evidence is relevant; thus, we will not overturn the trial court's decision absent an abuse of discretion. State v. Forbes, 918 S.W.2d 431, 449 (Tenn. Crim. App. 1995).

The trial court properly admitted the audio recording despite the offensive song lyrics. The admissions made by the Defendant during this conversation were extremely probative as evidence of the Defendant's guilt: he warned Grogger not to talk to police, asked Grogger if he was going to take sole responsibility for the bloody clothes in the trunk of the vehicle, and stated that, if Grogger had returned earlier, they could have presumably gone to the Defendant's residence and finished concealing their crimes. Deputy Logan inadvertently left the radio on inside the patrol car, and the trial court chastised him for doing so. However, the song lyrics were in no way associated with the Defendant; no evidence suggested he chose the song, as he had just been handcuffed and placed in the back of the patrol car. The probative value of the tape substantially outweighed any danger of unfair prejudice to the Defendant; thus, the trial court did not abuse its discretion in admitting the evidence.

III. Sufficiency of the Evidence

The Defendant challenges the sufficiency of the evidence supporting his convictions. Tennessee Rule of Appellate Procedure 13(e) prescribes that "[f]indings of guilt in criminal actions whether by the trial court or jury shall be set aside if the evidence is insufficient to support the findings by the trier of fact of guilt beyond a reasonable doubt." A convicted criminal defendant who

challenges the sufficiency of the evidence on appeal bears the burden of demonstrating why the evidence is insufficient to support the verdict, because a verdict of guilt destroys the presumption of innocence and imposes a presumption of guilt. See State v. Evans, 108 S.W.3d 231, 237 (Tenn. 2003); State v. Carruthers, 35 S.W.3d 516, 557-58 (Tenn. 2000); State v. Tuggle, 639 S.W.2d 913, 914 (Tenn. 1982). This Court must reject a convicted criminal defendant's challenge to the sufficiency of the evidence if, after considering the evidence in a light most favorable to the prosecution, we determine that any rational trier of fact could have found the essential elements of the crime beyond a reasonable doubt. See Jackson v. Virginia, 443 U.S. 307, 319 (1979); State v. Hall, 8 S.W.3d 593, 599 (Tenn. 1999).

On appeal, the State is entitled to the strongest legitimate view of the evidence and all reasonable and legitimate inferences which may be drawn therefrom. See Carruthers, 35 S.W.3d at 558; Hall, 8 S.W.3d at 599. A guilty verdict by the trier of fact accredits the testimony of the State's witnesses and resolves all conflicts in the evidence in favor of the prosecution's theory. See State v. Bland, 958 S.W.2d 651, 659 (Tenn. 1997). Questions about the credibility of witnesses, the weight and value of the evidence, as well as all factual issues raised by the evidence are resolved by the trier of fact, and this Court will not re-weigh or re-evaluate the evidence. See Evans, 108 S.W.3d at 236; Bland, 958 S.W.2d at 659. Nor will this Court substitute its own inferences drawn from circumstantial evidence for those drawn by the trier of fact. See Evans, 108 S.W.3d at 236-37; Carruthers, 35 S.W.3d at 557.

First degree premeditated murder is defined as the "premeditated and intentional killing of another." Tenn. Code Ann. § 39-13-202(a)(1). A premeditated killing is one "done after the exercise of reflection and judgment." Tenn. Code Ann. § 39-13-202(d). To be premeditated, the intent to kill must have been formed before the act itself, and the accused must be sufficiently free from excitement and passion. Tenn. Code Ann. § 39-13-202(d). An intentional act requires that the person have the desire to engage in the conduct. Tenn. Code Ann. § 39-11-106(a)(18). Whether premeditation is present is a question of fact for the jury, and it may be determined from the circumstances surrounding the offense. Bland, 958 S.W.2d at 660; State v. Anderson, 835 S.W.2d 600, 605 (Tenn. Crim. App. 1992). Our supreme court has noted the following non-exclusive factors that demonstrate the existence of premeditation: the use of a deadly weapon upon an unarmed victim, the particular cruelty of the killing, declarations by the defendant of an intent to kill, evidence of procurement of a weapon, preparations before the killing for concealment of the crime, and calmness immediately after the killing. Bland, 958 S.W.2d at 660.

First degree felony murder is "[a] killing of another committed in the perpetration of or attempt to perpetrate any . . . robbery[.]" Tenn. Code Ann. § 39-13-202(a)(2). Robbery is "the intentional or knowing theft of property from the person of another by violence or putting the person in fear." Tenn. Code Ann. § 39-13-401(a). Especially aggravated robbery is robbery that is accomplished with a deadly weapon and where the victim suffers serious bodily injury. Tenn. Code Ann. § 39-13-403(a). A person commits the offense of abuse of a corpse when he knowingly "[p]hysically mistreats a corpse in a manner offensive to the sensibilities of an ordinary person . . . ." Tenn. Code Ann. § 39-17-312(a). A person acts knowingly with respect to the result of his

conduct when he is aware that his conduct is reasonably certain to cause that result. Tenn. Code Ann. § 39-13-106(2).

The Defendant submits that the evidence points only to his co-defendant as the perpetrator of these crimes and that the State failed to prove his involvement in these offenses. The identity of the perpetrator is an essential element of any crime and therefore must be proven by the State beyond a reasonable doubt. State v. Thompson, 519 S.W.2d 789, 793 (Tenn. 1975). The identity of an accused may be established either by direct evidence, circumstantial evidence, or a combination of the two. Id. The determination of identity is a question of fact for the jury to determine after consideration of all the evidence. State v. Strickland, 885 S.W .2d 85, 87 (Tenn. Crim. App. 1993).

The evidence, in the light most favorable to the State, proved that the Defendant and Sandra were engaged in a yard sale business together and argued frequently. The Defendant often inquired about the victims' SUV, but they did not indicate a desire to sell it. On the morning of Friday, April 1, the Defendant left to go to his house to work; he returned around 12:00 or 1:00 p.m. with the victims' vehicle. He had the title to the car and gave it to his girlfriend. She said he appeared dirty and had an injury to his arm. When asked if he knew the whereabouts of the victim, he stated to a dispatcher that they had gone a trip and would be gone for a couple of weeks. He further relayed that he had purchased the SUV from the victims before they left. The victims died of multiple shotgun wounds, and their bodies were found on the Defendant's property during the early morning hours of April 3. Tractor tire tracks were visible leading back and forth from the victims' car to the brush pile. A shotgun was found inside the Defendant's home, and it was determined to be the weapon that fired the spent shotgun shells recovered from the driveway. Also, shells found inside the house matched the ones found in the driveway. Officers found the keys to the Dodge, the license plate, and Sandra's cell phone between the mattress and box-spring of the Defendant's bed. L.J.'s wallet and two spent shotgun shells were discovered in a wood-burning stove. The Defendant had the tractor keys in his possession when arrested. The Defendant had made previous statements threatening to kill Sandra if she did not sell him the SUV. Moreover, the Defendant made statements in the back of Deputy Logan's patrol car indicating his knowledge of the murders, and the Defendant made statements while incarcerated admitting his guilt.

These facts are sufficient to sustain the Defendant's convictions for first degree premeditated murder, felony murder, and especially aggravated robbery beyond a reasonable doubt. Similarly, we conclude that they are also sufficient to prove the Defendant's identity with respect to his convictions for abuse of a corpse. The victims' corpses were without question abused in that a tractor was used to move their bodies from the car to a brush pile, and the bodies were abused and dismembered during the process. As previously stated, the State proved the Defendant's identity with respect to these offenses. He is, therefore, not entitled to relief on this issue.

Conclusion

In consideration of the foregoing, we conclude that denial of the Defendant's motion to suppress was not error, that admission of the tape recording was proper, and that the evidence was

sufficient to support the Defendant's convictions beyond a reasonable doubt. The judgments of the Overton County Circuit Court are affirmed.

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DAVID H. WELLES, JUDGE